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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 439

UNITED STATES OF AMERICA, APPELLANT

v.

PHILIP KLEIN, ESCHEATOR OF THE COMMONWEALTH OF PENNSYLVANIA

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The Court of Common Pleas of Pennsylvania (R. 7–9) entered an opinion which is not reported. The original opinion of the Supreme Court of Pennsylvania (R. 14–17) is reported in 322 Pa. 481. The subsequent opinion of the Supreme Court of Pennsylvania (R. 39–40) is reported in 326 Pa. 260.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered May 17, 1937 (R. 39–40). The petition for appeal was filed (R. 40–41) and al-

lowed (R. 42) on August 14, 1937. The jurisdiction of this Court to review the judgment complained of is conferred by Section 237 (a) of the Judicial Code, as amended by the Act of February 13, 1925. Probable jurisdiction was noted by this Court on October 11, 1937. Consideration of the motion to dismiss or affirm was postponed to the hearing on the merits.

QUESTION PRESENTED

Whether a state statute is void in so far as it attempts to confer jurisdiction on a state court to determine and find the fact of escheat of moneys deposited in the registry of a Federal district court in that State, which moneys are presently in the Treasury of the United States, held by the United States for the purpose for which they were paid and also held subject to the control of the Federal court pursuant to an Act of Congress.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra*, pp. 17–27.

STATEMENT

By decree filed December 19, 1918, in the case of *Brown* v. *Pennsylvania Canal Co.*, No. 677, April Session, 1911, United States District Court, Eastern District of Pennsylvania, it was ordered that the unclaimed balance of certain sums adjudged to be owing to bondholders of the Pennsylvania Canal Company be paid into court (R. 27–28). In ac-

cordance with the provisions of Revised Statutes, Sections 995 and 996, as amended, *infra,* pp. 24–25, the moneys so paid into court were first deposited in a designated depositary of the United States, in the name and to the credit of the court, and thereafter deposited in the Treasury of the United States, in the name and to the credit of the United States (R. 22–23, 25, 32, 37–38).

On April 17, 1934, the Commonwealth of Pennsylvania, by Philip Klein, Escheator, filed a petition in the United States District Court for the Eastern District of Pennsylvania, praying that that court declare an escheat of these moneys, and order payment to the Commonwealth of Pennsylvania (R. 4, 11–12). Upon notice of the presentation of the petition, the United States Attorney filed an objection to the jurisdiction of the District Court. The petition was dismissed without prejudice on the ground that the District Court had no jurisdiction to declare an escheat of the moneys. (R. 4, 5, 15.)

Thereafter, the instant proceeding was begun by petition of Philip Klein, Escheator, appellee herein, filed in the Court of Common Pleas No. 5 of Philadelphia County. The petition prayed that an escheat be declared under state statutes of the unclaimed moneys in the case of *Brown* v. *Pennsylvania Canal Company, supra.* (R. 2–6.) The United States of America, by the United States Attorney for the Eastern District of Pennsylvania,

appeared specially and moved to dismiss the petition for lack of jurisdiction on the grounds that the state statutes were void in so far as they attempted to escheat moneys in the custody of the United States or its court, and that the funds sought to be escheated, since they were in the Treasury of the United States, were not within the jurisdiction of the courts of Pennsylvania (R. 7).

On February 21, 1935, an order was entered, refusing the prayer and the petition (R. 7). Thereafter the state escheat statutes, relied upon by the escheator as establishing the jurisdiction of the Court of Common Pleas, were amended by the acts of May 16, 1935, and June 28, 1935, to give a state court jurisdiction to decree an escheat of moneys in the registry of United States courts or of unclaimed moneys transferred to the Treasury of the United States in accordance with Section 996 of the Revised Statutes (R. 11, 12). On July 18, 1935, the Court of Common Pleas, in effect, dismissed the petition (R. 13–14). The escheator appealed to the Supreme Court of Pennsylvania. That court, on June 26, 1936, held the state escheat statutes, as amended, to be constitutional, reversed the judgment of the lower court, and remanded the case for further proceedings (R. 14–17).

The United States filed an answer in which it was alleged that the state statute authorizing the escheat of the moneys in question is unconstitutional, as an unlawful interference with the

Federal courts, and as an attempt to take jurisdiction over a matter outside the State's lawful jurisdiction (R. 18–20). The case was tried in the Court of Common Pleas, and a decree of escheat of the moneys in question to the Commonwealth of Pennsylvania was entered on October 1, 1936 (R. 32–33). That decree was reaffirmed and a final decree entered in the Court of Common Pleas on January 8, 1937 (R. 34). Exception by the United States to the decree of January 8, 1937, was entered and allowed on February 3, 1937 (R. 34–35). On appeal the Supreme Court of Pennsylvania affirmed the decree of escheat (R. 39–40).

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Pennsylvania erred:

1. In holding that the escheat laws of the State of Pennsylvania, as amended by the acts of May 16, 1935, and June 28, 1935, providing for the escheat of moneys or property deposited in the custody or under the control of any court of the United States in and for any district within the State of Pennsylvania was constitutional.

2. In failing to hold that such laws were unconstitutional because they constituted an interference with courts of the United States.

3. In failing to hold that the acts were unconstitutional because they constituted an unwarranted infringement on the sovereign power of the United States of America.

4. In failing to hold that the acts constituted an unlawful attempt to exercise sovereignty outside the jurisdiction of the State of Pennsylvania contrary to the Fourteenth Amendment to the Constitution of the United States.

5. In holding that the acts conferred jurisdiction to escheat moneys in the Treasury of the United States.

6. In affirming the judgment and decree of the Court of Common Pleas No. 5, Philadelphia County.

SUMMARY OF ARGUMENT

1. The Constitution conferred upon the Congress the power to set up a court such as the United States District Court for the Eastern District of Pennsylvania. That court had authority to exercise jurisdiction in a case of the nature of *Brown* v. *Pennsylvania Canal Company*, wherein certain funds were ordered paid into the registry of the court for the benefit of the persons on whose behalf the suit was brought. Later, by authority of Section 996 of the Revised Statutes, that money was paid into the Treasury of the United States. There it is still held for the benefit of certain bondholders whose whereabouts are, at the present time, unknown, to be paid out to them under proper order of the court. The statute of Pennsylvania authorizing a court of that State to decree an escheat of moneys held either in the registry of a United States court or transmitted by such court to the

Treasury of the United States, is an invasion of the sovereignty of the United States, and as such is unconstitutional and void.

A court first acquiring jurisdiction of a matter retains jurisdiction to the exclusion of courts of concurrent jurisdiction. Here the United States District Court has jurisdiction of the *res*, and a state court can not interfere therewith. Any interference on the part of a State with a Federal instrumentality, unless specifically authorized by Congress, is unconstitutional; and an interference with Federal courts is even less permissible. We submit that the action of the State of Pennsylvania in attempting to interfere with the proper functioning of a Federal court is unconstitutional.

2. An action of escheat is an action *in rem*. Admittedly, the state court had no jurisdiction of the *res*. The Supreme Court of Pennsylvania asserted that jurisdiction *in personam* had been obtained by publication, but the record fails to disclose that any of the unknown bondholders were or ever have been residents of Pennsylvania. Service by publication, therefore, could not possibly affect their rights. Neither does there exist a debt owing by the Pennsylvania Railroad Company. That debt has long since been discharged. The situs of the debt is not within the sovereignty of the State of Pennsylvania. In *Cunnius* v. *Reading School District*, 198 U. S. 458, relied upon by the court below, the debt had a situs in the State. The concept of

situs depends upon power and control, and if that power and control be lacking, a debt may not be said to have a situs in a State. The courts of Pennsylvania, therefore, having no jurisdiction either *in rem* or *in personam*, and the debt having no situs in Pennsylvania, there was an absence of jurisdiction to decree an escheat.

ARGUMENT

I

THE PENNSYLVANIA ESCHEAT STATUTE, AS APPLIED, CONSTITUTES AN UNCONSTITUTIONAL INTERFERENCE WITH THE FEDERAL COURTS

In the case of *Brown* v. *Pennsylvania Canal Co. et al*, instituted in the year 1911 in the United States District Court for the Eastern District of Pennsylvania, the Pennsylvania Railroad Company was required to pay to the trustee for the bondholders of the Pennsylvania Canal Company the sum of $1,379,941.28, which the railroad company had diverted, together with interest thereon from July 1, 1910 (R. 29). After all known bondholders had filed their claims and received their pro rata share, there still remained a balance of several thousand dollars, to which certain unknown bondholders were entitled. First, the known bondholders sought a decree directing that this balance be prorated among them. The petition was denied, the court holding that the money was the property of the unknown bondholders whenever they should

come in and prove their claims (R. 28). Theretofore the trustee had been directed to pay the money into the registry of the court (R. 27). After the lapse of five years, the balance of $18,650.75, on June 26, 1926, was covered into the Treasury of the United States (R. 25) pursuant to Section 996 of the Revised Statutes, *infra*, p. 25, but it was still available for the payment of claims,[1] for that section provides that where money, formerly in the registry of a court, has been paid into the Treasury of the United States, any person, corporation, or company entitled to such money, on petition to the court and full proof of right thereto, may obtain an order of court directing the payment of such money to it. No time limit has ever been placed on the proof of claims by the District Court (274 Fed. 467, 469). Under the orders of the United States District Court, therefore, and under the statutes the unknown bondholders are still entitled to prove their claims and obtain payment thereof.

The escheat statutes of the State of Pennsylvania, *infra*, pp. 17–24, on the contrary, provide for an escheat to that State of such moneys as have been unclaimed for seven years, and the state courts have decreed that such an escheat has here taken place. If such decree be effective, it deprives the bondholders of the right given them by the statutes of

[1] On March 30, 1936, the District Court entered a decree allowing payment to a bondholder who had made claim therefor in 1935 (R. 25).

the United States and the decree of the United States District Court, now or later to prove their claims and to receive their pro rata share of the sum remaining on deposit in the Treasury of the United States.

The issue presented, therefore, is whether a State has power to void or to impair the effect, not only of a decree of a court of the United States, but also of statutes of the United States. The answer to this question, manifestly, is no, as the Federal court admittedly had jurisdiction of the subject-matter and of the parties, and the statutes had reference to a matter within the jurisdiction of the Congress.

A State, of course, possesses full powers of a sovereign within its territorial confines, except over matters as to which it has surrendered or delegated sovereignty to the United States; but that delegation, once made, is complete and paramount, and can not be limited or in any way impaired by the exercise of the sovereign powers otherwise reserved to the States. *McCulloch* v. *Maryland,* 4 Wheat. 316, 405, 429, 436; *Tarble's Case,* 13 Wall. 397, 406; *Claflin* v. *Houseman, Assignee,* 93 U. S. 130, 136–137.

Among the powers delegated to the Federal Government was jurisdiction to try and determine in its courts cases of the character of *Brown* v. *Pennsylvania Canal Co. et al., supra.* Such jurisdiction is plenary, and, of course, includes complete and

untrammeled control over the disposition of funds paid into court in pursuance of its decrees, subject to such regulation as the Congress may from time to time prescribe. *Tennessee* v. *Davis*, 100 U. S. 257, 263, 266; *Martin* v. *Hunter*, 1 Wheat. 304, 337, 363.

The Congress has provided for a registry in which such funds are to be deposited, and likewise has provided that if unclaimed for a period of five years, they shall be transmitted to the Treasury of the United States and constitute a permanent appropriation for the payment of any judgment rendered in the action by the particular Federal court upon full proof, at any time, by any claimant, of right, title, and interest thereto. It follows that an attempt on the part of the State of Pennsylvania to declare an escheat of moneys in the custody of the United States, and for the disposition of which the Congress has provided, is an invasion of the sovereignty of the United States, and that a statute authorizing such an invasion is unconstitutional and void. *Harris* v. *Dennie*, 3 Pet. 292, 304–305.

This Court has many times declared that where a court of competent jurisdiction, Federal or state, has taken possession of property, or by its procedure has obtained jurisdiction over the same, such property is withdrawn from the jurisdiction of the other courts as effectually as if the property had

been entirely removed to the territory of another sovereignty.[2]

Similarly, it has been held that a court having jurisdiction of a person or property may not be deprived of the right to deal with such person or property until its jurisdiction is exhausted, and that no other court has the right to interfere with its custody or possession. *In re Johnson,* 167 U. S. 120, 124–125; *Tarble's Case,* 13 Wall. 397, 406.

Attempts of States and Territories to escheat funds on deposit with national banks have been held to be unconstitutional as constituting an interference with a Federal instrumentality. *First National Bank* v. *California,* 262 U. S. 366; *National City Bank of New York* v. *People of the Philippine Islands,* October Term, 1937, No. 35. *A fortiori,* an Act providing for the escheat of funds in the Treasury of the United States and under the control of the United States is unconstitutional. That is an interference not with an instrumentality, but with the sovereign itself. Particularly, an interference with custody and control of Federal courts over things concerning which they have jurisdiction, is forbidden. *Heidritter* v. *Elizabeth Oil-Cloth Co.,* 112 U. S. 294, 301–304; *McKay* v. *Kaly-*

[2] *Palmer* v. *Texas,* 212 U. S. 118, 125; *Murphy* v. *John Hofman Co.,* 211 U. S. 562, 568–569; *Wabash R. R.* v. *Adelbert College,* 208 U. S. 38, 54; *Farmers Loan Co.* v. *Lake St. Rd. Co.,* 177 U. S. 51, 61; *Moran* v. *Sturges,* 154 U. S. 256, 274.

ton, 204 U. S. 458, 469; *Wabash R. R. Co.* v. *Adelbert College*, 208 U. S. 609, 611.

We respectfully submit, therefore, that the statute in question, in so far as it undertakes to escheat moneys in the custody of the United States, which is a statutory trustee in respect of the fund in question [*United States* v. *Cochrane*, 87 F. (2d) 3, 4 (C. C. A. 5th); *Equitable Trust Co.* v. *Western Pac. Ry Co.*, 299 Fed. 304, 307 (N. D. Cal.); *Brown* v. *Pennsylvania Canal Co.*, 279 Fed. 417, 418 (C. C. A. 3d)], is unconstitutional and void because of its attempted interference.

II

THE STATUTE, AS APPLIED, VIOLATES THE FOURTEENTH AMENDMENT AS AN ATTEMPT TO CONTROL THE DISPOSITION OF A *res* OVER WHICH THE STATE HAS NO JURISDICTION

Under the sovereign powers reserved to the States, a State has the right to escheat property under such reasonable terms and conditions as it may impose; but this sovereign right, of course, extends only to such property as is within its dominion and control. It is impossible, therefore, for a State either to escheat or decree an escheat where it does not possess full power and control over either the person or property. *Commonwealth* v. *Thomas' Adm'r*, 140 Ky. 789, 795–796; *In re Lyons' Estate*, 175 Wash. 115, 118–120; cf. *In re Melrose Ave.*, 234 N. Y. 48.

An action of escheat is an action *in rem*. Woerner on Administration, 3d Ed., Sec. 133; *Hamilton* v. *Brown*, 161 U. S. 256, 274; *Security Bank* v. *California*, 263 U. S. 282, 286–287. Admittedly, the State of Pennsylvania had no control of the *res* in the instant case. *In the Matter of Escheat*, 322 Pa. 481. That *res* concededly is in the Treasury of the United States, not only outside of the sovereignty of Pennsylvania, but outside of its territorial confines. In order to avoid this difficulty, the Supreme Court of Pennsylvania undertook to hold that it had jurisdiction *in personam*, but obviously it can not be asserted that it has jurisdiction of the person, for the persons entitled to the fund are unknown, and therefore whether or not they are residents of Pennsylvania, or ever have been, is unknown. See *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394, 400, 401. Nor can such jurisdiction be asserted on the theory that it is a debt owing to unknown persons by a resident of Pennsylvania, namely, the Pennsylvania Railroad Company. The debt owed by that company had long since been discharged by payment into court of the amount of the debt. Indeed, the railroad company sought to recover the remaining balance, but this was denied by the United States District Court in an unreported opinion (see Appendix, *infra*, p. 28), on the ground that the money was originally held by the Pennsylvania Railroad Company as trustee for the original bondholders, that each indi-

vidual bondholder owned his proportionate share of the money which the railroad company had been required to pay, and that the railroad company had no interest therein.

The decision of the Pennsylvania Supreme Court in the case at bar relies on the opinion of this Court in *Cunnius* v. *Reading School District*, 198 U. S. 458. That case has no application to the instant case, because there the debtor was a resident of and subject to the jurisdiction and control of the State. It is manifest that the distinction is fundamental between a debt of that character and one having a situs not only without the State and in the Federal Government, but one which also is by Act of Congress expressly subjected to the control of a Federal court. The elements that gave the debt a local situs within the jurisdiction of the State are absent in the instant case.

There was no property within the State under the facts of this case over which the State had jurisdiction and control. It is the element of control, and not the spatial quality of property which gives whatever significance there is to the legal concept, "situs." There is, therefore, no property whose "situs" is within the State, no property over which the State may exercise control. In other words, the State, not having power of control over the debt, that control being admittedly in the Federal court [*In the Matter of Escheat, supra*], there is no basis for jurisdiction for the state court. See

Carpenter "Jurisdiction over Debts, Etc.," 31 Harv. L. R. 905, 906-914.

Service was sought in this case by publication. The law is well settled that service by publication is absolutely ineffective to reach persons who are nonresidents of the State unless the property of such persons is within and has been subjected to the jurisdiction of the court.[1] It therefore appears that the decree of escheat which was undertaken in the instant case is an absolute nullity, because the court had no jurisdiction either *in rem* or *in personam*.

CONCLUSION

We respectfully submit that the judgment of the Supreme Court of Pennsylvania is incorrect and should be reversed.

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JANUARY 1938.

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[1] *Pennoyer* v. *Neff*, 95 U. S. 714; *Bigelow* v. *Old Dominion Copper Co.*, 225 U. S. 111; *Riverside Mills* v. *Menefee*, 237 U. S. 189; *N. Y. Life Ins. Co.* v. *Dunlevy*, 241 U. S. 518; *Roller* v. *Holly*, 176 U. S. 398.

APPENDIX

The Pennsylvania escheat statutes as amended, Purdon's Pennsylvania Statutes, Title 27, Secs. 41, 45, 282, and 334, are as follows:

SEC. 45. Every court having jurisdiction in cases of escheat shall, after the determination of each and every case, file of record a finding or adjudication, which shall set forth:

I. Whether an escheat hath occurred or not.

II. In what manner and for what cause the said escheat hath occurred, with the full name of the intestate, if any there be, or of the person who was last seized or possessed of the property in question.

III. What estate, real or personal, hath escheated, and what is the value thereof.

IV. Where said estate, real or personal, is situated, and in whose possession the same then is.

And in case the said court shall find that any property, real or personal, hath escheated, the same shall be awarded to the escheator for and on behalf of the commonwealth (1889, May 2, P. L. 66, Sec. 10).

SEC. 41. That the jurisdiction in all cases of escheat under the provisions of this act, shall be vested in the courts of this Commonwealth, as follows, namely:

Whenever an escheat shall occur or be supposed to occur by reason of any person dying intestate, without heirs or known kindred, a widow or surviving husband, the orphans' court of the county wherein said

decedent was resident at the time of his death, or in case said decedent was not at the time of his death resident within this Commonwealth, then the orphans' court of the county in which the greater part of his property, real and personal, shall be situate, shall have jurisdiction.

Whenever an escheat shall occur, or be supposed to occur, of any property, estate or effects deposited in the custody of any court, or with any depository, receiver or other officer thereof, the owner whereof shall be unknown, and whenever any escheat shall occur or be supposed to occur of any property, estate or effects held by any trustee or other person in a fiduciary capacity, who shall have filed an account thereof in any court of this Commonwealth, by reason of the fact that the cestui que trust or beneficial owner thereof shall be unknown, then and in such case, the court in which, or in the custody of any depository, receiver or other officer of which said property, estate or effects may have been or shall be deposited, whether the same be real or personal, or in which said account has been or may be duly filed, shall have jurisdiction; and whensoever any property, estate, or effects held by any trustee or trustees under any trust, or held by and resulting to such trustee or trustees from the exercise of the trust, or resulting after the termination of the trust and before distribution is actually made under the terms of the trust or decree of court, from rents, accretions, profits, or interest from, of, or on the trust property, or any part thereof, shall escheat or be supposed to escheat by reason of the fact that such property, estate, or effects has no lawful owner, the court of common pleas of the

county in which such property, estate, or effects, or the greater part thereof, shall be located, shall have jurisdiction, except in cases where the trustee shall be a corporation, in which cases the court of common pleas of the county wherein the principal office of such corporation is located shall have jurisdiction.

Whenever an escheat has occurred, or shall occur, of any money or property deposited in the custody of, or under the control of, any court of the United States in and for any district within this Commonwealth, or in the custody of any depository, clerk or other officer of such court, the court of common pleas of the county in which such court of the United States sits, shall have jurisdiction to ascertain if an escheat has occurred, and to enter a judgment or decree of escheat in favor of the Commonwealth. (As amended 1935, June 28, P. L. 475, Sec. 2.)

SEC. 282. After any particular deposit of money, made with every person, copartnership, bank, national bank, safe deposit company, trust company, association, and corporation, and savings fund, savings institution, and savings bank, shall not have been increased or decreased, or if not increased or decreased, shall not be known to have been credited with interest, on the passbook or certificate of deposit of the depositor at his request, for the period of ten successive years in all cases, except savings funds, savings institutions, and savings banks, and in the case of savings funds, savings institutions, and savings banks shall not have been so increased, decreased, or credited for a period of twenty-one years, the same shall be escheatable to the Commonwealth, and shall

be escheated in the manner hereinafter provided, with interest thereon actually accrued to the date of the decree for the escheat of the same, whether such deposit was, at the expiration of said period, in the possession of the depositary with which it was originally deposited, or in the possession of another depositary which took over mediately or immediately, in any manner, whether before or after the expiration of said period of ten years or twenty-one years, as the case may be, the deposits of the depositary with which the deposit was originally made.

After the owner, beneficial owner, or person entitled to any of the following named moneys or property, shall be and remain unknown, or the whereabouts thereof shall have been unknown, for the period of seven successive years, such moneys or property shall be escheatable to the Commonwealth, and shall be escheated in the manner hereinafter provided, with interest actually accrued thereon to the date of the decree for the escheat of the same, namely:

(a) Moneys or other estate of any kind whatsoever held by any person, bank, national bank, trust company, or other association, or corporation, as guardian, committee, executor, administrator, assignee, or receiver, or as trustee under or by reason of a dry trust or under or by reason of any other trust the active duties of which have terminated except the delivery or payment to the beneficiaries thereunder of the subject of the trust, and any increments accrued thereon.

(b) Any moneys, estate, or effects paid into or deposited in any court of this Commonwealth, or in any Federal court in and for any district within the Commonwealth,

or in the custody of any officer of any such court.

After any moneys or property held by any person, bank, national bank, trust company, or other corporation, or by any association, limited partnership, or copartnership, belonging to any other person, the escheat of which is not otherwise provided for in this section, has been and remained unclaimed, by the person for whom the same is held, for the period of seven or more successive years, such moneys or property shall be escheatable to the Commonwealth, and shall be escheated in the manner hereinafter provided, with interest actually accrued thereon to the date of the decree for the escheat of the same.

After any dividend or dividends, profit or profits, declared by any bank, national bank, trust company, or other corporation, or association, or by any partnership, and after any debt or interest on any debt or debts owed by any such bank, national bank, trust company, or corporation, association, or copartnership, shall have been and remained due and unpaid for three successive years, such dividends or profits, debt or interest on debt, shall be escheatable to the Commonwealth, and shall be escheated in the manner hereinafter provided, with interest actually accrued thereon to the date of the decree for the escheat of the same.

Such escheat shall, at the suggestion of the Auditor General, be determined and enforced by an action in the nature of a bill in equity, filed by and in the name of the Attorney General, against the depositary, fiduciary, or debtor, and all of his or its depositors, beneficiaries, or creditors for whom he or it holds unclaimed moneys escheatable under the provisions of this act, in the ap-

propriate court for the county where the debtor, if an individual, resides, or, if a corporation, where it maintains its principal office. Such action shall be brought in the court of common pleas, except: (a) Where it is sought to escheat unclaimed trust funds, in which case the same shall be brought in the court having jurisdiction of such funds; and except (b) where it is sought to escheat moneys paid into or deposited in a court or in the custody of any officer thereof, in which case such action shall be brought in the court into which the money was paid, or in which it was deposited, or in the custody of an officer of which court the said moneys are.

When the moneys have been paid into and are in the custody of any court, the escheat of the same shall be determined and enforced, at the suggestion of the Auditor General, by a petition filed by the Attorney General in said court, upon which proceedings shall be had as in other cases of escheat provided for by this section. Proceedings for the escheat of moneys in the possession or custody of any officer of any court shall be by a bill as provided for by this section in other cases, in which bill such officer and the persons entitled to such moneys shall be made codefendants.

Any such escheat proceedings may be prosecuted whether the deposits, dividends, moneys, funds, or other property or estate sought to be escheated, shall have been reported to the Auditor General in conformity with the provisions of this act or have not been so reported. Any number of items may be joined in one action against one debtor, though owed to different creditors.

If service of the bill can not be had on the creditors defendant within the State, service

shall be made by publication for two successive weeks, in a newspaper of general circulation, published in the county in which the debtor is resident or has its principal office, and also, when practicable, for the same period, in such a newspaper published in the county, within or without the Commonwealth, where, when last heard from by the debtor, the creditor had his residence. Publication may be made in such form as the court shall direct, and need not contain any order or other paper in full.

If such creditors or their legal representatives shall appear in the cause within the time limited by the court, and establish their right to recover said sums from the debtor but for the provisions of this act, and if this right shall not be barred by the statute of limitations or presumption of payment, a decree shall be made for the payment of said sums to them after paying their proportionate part of the costs of the cause and of said advertising: Provided, That such persons, on demand, may have any issue of fact determined by a jury; and if they shall not so appear and establish such right, a decree shall be made that said sums have escheated and shall be paid by the debtor to the State Treasurer for the use of the Commonwealth; and the amount of such decree shall bear interest at the rate of twelve per centum per year from sixty days after the same is made; and such decree shall be effectual to bar the creditors from claiming the said sums from the debtor. An appeal may be taken, by either or any party to such action, to the Supreme Court, at any time within thirty days after the date of the decree issued therein.

An action may be begun, in the nature of a bill for discovery merely with respect to the subject matter of this act, whether in this or other sections hereof, against the debtor, without the necessity of specifying the items which should escheat, with the right to compel an answer under oath, to subpoena all persons as witnesses, and to compel the production of all books, papers, and records; and from time to time the bill may be amended to pray for the escheat of specific items under this section seven, and to make parties to the bill the creditors as ascertained. (As amended 1935, May 16, P. L. 195, Sec. 1.)

* * * * * *

SEC. 334. That whensoever any money, estate or effects, shall have been, or shall hereafter be paid into, or deposited in the custody or be under the control of any court of this Commonwealth, or of any court of the United States in and for any district within this Commonwealth, or shall be in the custody of any depository, registry, or of any receiver, clerk or other officer of any of said courts, and the rightful owner or owners thereof shall have been or shall be unknown for the space of seven years, the same shall escheat to the Commonwealth, subject to all legal demands on the same. (As amended 1935, June 28, P. L. 475, Sec. 1.)

R. S., Sec. 995, as amended; U. S. C., Title 28, Sec. 851, provides—

Moneys paid into court; deposit.—All moneys paid into any court of the United States, or received by the officers thereof, in any cause pending or adjudicated in such

court, shall be forthwith deposited with the Treasurer, or a designated depositary of the United States, in the name and to the credit of such court. Nothing herein shall be construed to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court.

R. S., Sec. 996, as amended; U. S. C., Title 28, Sec. 852, provides—

Same; withdrawal.—No money deposited as aforesaid shall be withdrawn except by order of the judge or judges of said court, respectively, in term or in vacation, to be signed by such judge or judges, and to be entered and certified of record by the clerk; and every such order shall state the cause in or on account of which it is drawn.

In every case in which the right to withdraw money so deposited has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, it shall be the duty of the judge or judges of said court, or its successor, to cause such money to be deposited in the Treasury of the United States, in the name and to the credit of the United States. Any person or persons or any corporation or company entitled to any such money may, on petition to the court from which the money was received, or its successor, and upon notice to the United States attorney and full proof of right thereto, obtain an order of court directing the payment of such money to the claimant, and the money deposited as aforesaid shall constitute and be a permanent appropriation for payments in obedience to such orders.

The Permanent Appropriation Repeal Act, June 26, 1934, c. 756, 48 Stat. 1224, 1230, Sec. 17, provides—

(a) Effective July 1, 1935, the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section, as well as appropriation accounts bearing similar titles on the books of the Government, are abolished, and any unobligated balances under such accounts as of June 30, 1935, shall be covered into a trust fund receipt account in the Treasury to be designated "Unclaimed Moneys of Individuals Whose Whereabouts Are Unknown." Any appropriations to which expenditures under such accounts have been chargeable theretofore are hereby repealed. There are authorized to be appropriated, annually, from such account such sums as may be necessary to meet any expenditures of the character now chargeable to the appropriation accounts abolished by this section. The Secretary of the Treasury or the Commissioners of the District of Columbia, as the case may be, shall submit with their annual estimates of appropriations an amount necessary to meet expenditures properly chargeable to this account.

(b) (1) Unclaimed moneys, Food Administration.

(2) Unclaimed moneys of individuals whose whereabouts are unknown (Veterans' Administration).

(3) Unclaimed moneys of former patients, Veterans' Administration hospital.

(4) Unclaimed moneys of individuals whose whereabouts are unknown (relief of American citizens in Europe).

(5) Unclaimed moneys of individuals whose whereabouts are unknown (Interior, civil).

(6) Unclaimed moneys of individuals whose whereabouts are unknown (Justice).

(7) Unclaimed moneys of individuals whose whereabouts are unknown (Labor).

(8) Unclaimed moneys of individuals whose whereabouts are unknown (Navy).

(9) Unclaimed moneys of individuals whose whereabouts are unknown (State).

(10) Unclaimed moneys of individuals whose whereabouts are unknown (Treasury).

(11) Unclaimed moneys of individuals whose whereabouts are unknown (War).

(12) Unclaimed individual Indian moneys.

(13) Unclaimed funds of discharged patients, Saint Elizabeths Hospital.

(14) Return of unclaimed money deposited by clerks of courts.

(15) Outstanding liabilities, lands.

(16) Return of subscriptions to Liberty Bond issues placed through American consulates.

(17) Return of subscriptions to Liberty Bond issues by civilian employees of Naval Establishment.

(18) Refund to depositors, excess licenses, under section 10 (c), Trading with the Enemy Act.

(19) Return of subscriptions to Liberty Bond issues placed through the postmaster at Philadelphia, Pennsylvania.

(20) Unclaimed funds of Federal prisoners.

(21) Rosa Goldman—cash bail exacted.

(22) Unclaimed funds of Jei Bei Ota, deceased Japanese alien.

Sur Petition of the Pennsylvania Railroad Company for an Order Awarding to it Moneys Formerly in the Registry of the Court and Turned Into the Treasury of the United States

(*Filed October 16, 1936*)

Argued October 9th, 1936

DICKINSON, J. OCTOBER 15TH, 1936.

This cause was argued in the absence of the United States Attorney. A ruling was withheld to give the United States an opportunity to be heard. In view of the conclusion reached the United States has no interest in the petition. The like comment applies to the Commonwealth of Pennsylvania which has likewise filed an answer to the petition.

DISCUSSION

1. The real question is that of the ownership of the moneys which were paid into the Registry of the Court. The first question is what has this Court to do with the controversy. The moneys, the ownership of which is in dispute, are no longer in the Registry of the Court. The answer to this question is to be found in the Act of Congress which makes it the duty of this Court when moneys, once in its Registry, have been, as required by law, paid into the Treasury of the United States, as is the case here, to in effect certify to whom the moneys belong, if a claimant to them appears. The Pennsylvania Railroad Company is such claimant. The question raised is whether the moneys rightfully belong to the claimant. Other claimants are only indirectly, although really, concerned.

2. The title set up by the railroad to the moneys is that its money was paid into the Registry of the Court for the benefit of the bondholders of the Pennsylvania Canal Company failing whom the money under, what may be called a resulting trust, reverts to the railroad. In other words, if a bondholder claimant appeared, the railroad concedes his first claim to the money but in the absence of any such claimant the thus unclaimed money remains the money of the railroad.

This claim of the railroad has been pressed upon us in an argument of clarity and force. It might well be found to be persuasive if it were based upon a misconception or in a sense two. One is that these moneys are not the moneys of the Railroad Company but were paid into Court as the moneys of the bondholders of the Pennsylvania Canal Company. It is true of course that the money was the money of the Railroad Company who paid it over. When so paid it ceased to be the money of the Railroad Company as completely as when any one under an obligation to pay meets his obligation by payment. One who pays his note, payable at a Bank which holds it for collection has no right to the return of his money because the payee does not call upon the Bank for it. The money paid belongs to the payee and no one can lay successful claim to it except under a title derived through the payee. Title by escheat is no exception to this rule because an escheat is predicated upon the principle that the State is the ultimate heir or residuary legatee of the person to whom the escheated thing belongs. The other misconception is that these moneys ever were the moneys of the railroad Company. It

merely had at one time the physical custody of the money. It was no more its money than one who holds a sum of money in trust for others and who pays over the moneys for which he is accountable, owns the money which he thus pays. It does not belong to him but to his cestui que trustent. The theory on which the bondholders recovered from the railroad company was that it had received moneys and property of the Pennsylvania Canal Company which it held as trustee for the bondholders of that Company. (*Brown* v. *Pennsylvania Canal Co.*, 235 Fed. Rep. 669.)

The money which the railroad company paid into the Registry of this Court were not its own moneys but the moneys of the different bondholders for each of whom it had held the moneys. This Court held that the unclaimed part of the moneys should not be distributed to those of the bondholders who had proven their claims. Why? Because these moneys did not make up a common fund for distribution among bondholders who proved their claims but the fund was the aggregate of the sums belonging to a number of individual bondholders to whom as individuals it belonged. (*Brown* vs. *Pennsylvania*, 274 Fed. Rep., 467.)

By the same token as it belongs to them it does not belong to the railroad company. There is no analogy between the situation here presented and a surplus in the hands of an assignee for the benefit of creditors. There the conveyance is, it is true, for the benefit of the creditors of the assignor but the property conveyed is none the less his property. It is a nearer analogue to suppose distribution of a fund among a number of named distributees,

some of whom do not collect the sums awarded them. Title to the money awarded would be in the distributee; in his legal representative, if deceased; in any one to whom he had assigned his claim or to one claiming through him by escheat or otherwise. No one who could not show some such title would have a claim.

In speaking of title by escheat, we are of course speaking not of title to this fund but of a title by escheat when it exists. The Commonwealth of Pennsylvania has made answer to the claim of the Railroad Company. We are not now determining the claim of the Commonwealth by escheat. Its title will be demonstrated if and when it asserts it. All which is now ruled is that the Pennsylvania Railroad Company has shown no title to the moneys in question.

The prayer of the petition should be denied. A formal decree may be submitted.

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